IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MICHAEL P. MCLEOD,	)
	)
v.	)
	)
LOUIS F. PIGNATELLI,	)
PIGNATELLI & MERTES, P.C. f/k/a	)
PIGNATELLI & LISTON, P.C.	)
PIGNATELLI & ASSOCIATES, P.C.	)

COMPLAINT

Plaintiff MICHAEL P. MCLEOD, individually, [hereinafter MCLEOD] by his attorneys, complaining against LOUIS F. PIGNATELLI, PIGNATELLI & MERTES, P.C. f/k/a PIGNATELLI & LISTON, P.C. and PIGNATELLI & ASSOCIATES, P.C. [hereinafter collectively PIGNATELLI] states as follows:

JURISDICTION AND VENUE

1. MCLEOD is a citizen of California.

2. LOUIS F. PIGNATELLI is a citizen of Illinois licensed to practice law in Illinois.

3. PIGNATELLI & MERTES f/k/a PITNATELLI & LISTON, P.C. and PIGNATELLI & ASSOCIATES is a law firm and citizen of Illinois.

4. The controversy between the parties involves an estate that is being probated in Whiteside County, Illinois.

5. The amount in controversy between the parties exceeds the sum of $75,000.00 exclusive of interest and costs.

6. Jurisdiction is predicated upon 28 U.S.C. § 1332(a) (1).

7. Venue is proper in this Judicial District under 28 U.S.C. § 1391(b)(1) since the events giving rise to this Complaint occurred in this Judicial District.

THE PARTIES

8. Plaintiff MICHAEL P. MCLEOD is the surviving son of Elizabeth M. Wahl, deceased.

9. Anne Wahl Roberts is the surviving daughter of Elizabeth Wahl McLeod.

10. MCLEOD is the Executor and heir to the Estate of Elizabeth M. Wahl.

11. PIGNATELLI is an attorney at law practicing in the professional corporation of PIGNATELLI & MERTES f/k/a PITNATELLI & LISTON, P.C. and/or PIGNATELLI & ASSOCIATES. PIGNATELLI & MERTES f/k/a PITNATELLI & LISTON, P.C. and/or PIGNATELLI & ASSOCIATES is or was a professional corporation or the successor to a professional corporation or law firm wherein PIGNATELLI was practicing law.

ALLEGATIONS OF PROFESSIONAL NEGLIGENCE

12. In 2006, Elizabeth M. Wahl engaged PIGNATELLI for estate planning purposes.

13. During the course of the engagement and retention of PIGNATELLI but prior to the execution of Elizabeth M. Wahl's Last Will and Testament, PIGNATELLI learned the following:

(1) Elizabeth M. Wahl (Elizabeth) had two children, namely Michael P. McLeod (Michael) and Anne Wahl McLeod (Anne);

(2) Elizabeth desired to leave her personal property in equal shares to Michael and Anne;

(3) Elizabeth desired to leave 50% of the residue of her estate to Michael;

(4) Elizabeth desired to leave 50% of the residue of her estate in trust;

(5) Elizabeth desired that the monies held in trust were for the health, support, and education of Anne as deemed reasonable in the sole discretion of the Trustee;

(6) Elizabeth desired that Michael be the trustee of the aforesaid trust;

(7) upon the death of Anne, the monies remaining in the trust be distributed.

14. In 2006, PIGNATELLI drafted the Last Will and Testament of Elizabeth M. Wahl.

15. On or about August 19, 2006, PIGNATELLI presented to Elizabeth M. Wahl the Last Will & Testament.

16. On or about August 19, 2006, Elizabeth M. Wahl executed the Last Will and Testament presented to her by PIGNATELLI, a true and correct copy attached hereto as **Exhibit 1.**

17. Elizabeth died on June 26, 2011.

18. Michael and Anne survived her death.

19. A probate estate was opened and remains pending in the Fourteenth Judicial Circuit Court in Whiteside County under cause 11 P 91.

20. Michael and Anne disagreed regarding the disposition of Elizabeth's estate.

21. The dispute specifically arises concerning Sections One, Two and Three.

22. Under Section One, it provides in part that Elizabeth was giving, devising and bequeathing "***all of my property of whatever nature, both real and personal***, personal effects, household goods, automobiles, and all other items of goods and chattels to my children who survive me in shares of substantially equal value, per stirpes and not per capita." [emphasis added].

23. Under Section Two, it provides that the ***residue of the estate*** is to be divided one

half to Michael, per stirpes and one half to Michael as Trustee of the Children's Trust. [emphasis added].

24. Under Section Three, the Children's Trust, the Trustee was to pay Anne so much or all of the net income and principal from the Trust as the Trustee determines from time to time reasonably necessary for Anne's health, support, and education as are deemed reasonable in the sole discretion of the Trustee, considering Anne's other resources know to the trustee, and shall add to principal any undistributed net income. Payments shall be made on the basis of need in the Trustee's discretion. Upon Anne's death, if Michael was alive, the Trustee was to distribute one-half to Michael per stirpes and one half to Anne's children per stirpes.

25. If Section One of Elizabeth's Last Will & Testament disposed of all property, then Section Two would be meaningless as there would be no residue to distribute. Further, there would be nothing to distribute the remainder beneficial interest set forth in Section Three if all property of every nature and kind would be distributed by Section One.

26. For purposes of reconciling Sections One, Two and Three, Michael retained law firms located in this District to protect his interest and Anne retained a law firm to protect her interest.

27. PIGNATELLI maintains that he prepared Elizabeth's Last Will & Testament with the intent to give in substantially equal value to Michael and Anne, all of Elizabeth's personal property of whatever nature, personal effects, household goods, automobiles, and all other items of goods and chattels.

28. Alternatively, PIGNATELLI maintains that he prepared Elizabeth's Last Will & Testament to dispose all of Elizabeth's property of whatever nature such that there would be no residue to distribute under Section Two.

29. PIGNATELLI maintains that he prepared Elizabeth's Last Will & Testament with the purpose of giving Michael, *per stirpes*, one-half of all Elizabeth's property other than Elizabeth's personal property of whatever nature, personal effects, household goods, automobiles, and all other items of goods and chattels and the other one-half of Elizabeth's property to be placed in the Children's Trust with Michael to be Trustee of the Children's Trust.

30. PIGNATELLI deviated from the standard of care of reasonably well qualified attorneys practicing in the community and was negligent by failing to provide the legal knowledge, skill and care in the preparation of Elizabeth M. Wahl's Last Will and Testament in one or more of the following ways:

1) Failed to limit Section One to personal property, personal effects, household goods, automobiles and any other goods and chattels so as to provide the balance of the estate in the residuary clause; or

(2) Created a residual clause for the disposition of the estate after having disposed of all monies in Section One; or

(3) Created a trust with certain beneficial interest to Plaintiff without providing for the shares of stock owned by decedent at the time of her death to be placed into the trust upon Elizabeth M. Wahl's death; or

(4) Failed to define how the remainder interest would be distributed in the event of the death of Anne preceding plaintiff.

31. As a proximate cause of the ambiguities created by PIGNATELLI in the Last Will and Testament, the dispute between Anne and Plaintiff has engendered substantial attorney fees and costs and the delay in the Probate proceeding in seeking to resolve the matter. In addition, the dispute has endangered Plaintiff's right to the contingent remainder beneficial interest. Due to

these ambiguities, it caused Plaintiff to reach a settlement with Anne that deprived him of among other things a contingent remainder beneficial interest.

32. But for the dispute, Plaintiff would have not incurred the legal fees and costs and would have had the benefit of the monies and would have held the remainder beneficial interest in the trust and trustee fees.

33. All of the legal services PIGNATELLI provided were undertaken in the course and scope of his employment with PIGNATELLI & MERTES f/k/a PITNATELLI & LISTON, P.C. and/or PIGNATELLI & ASSOCIATES.

PRAYER FOR RELIEF

Wherefore, Plaintiff Michael P. McLeod prays for judgment in his favor and against LOUIS F. PIGNATELLI, PIGNATELLI & MERTES f/k/a PITNATELLI & LISTON, P.C. and/or PIGNATELLI & ASSOCIATES.

s/Elliot R. Schiff
One of the Attorneys for Michael P. McLeod

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